

required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

#### Paperwork Reduction Act of 1995

This notice of final waiver and extension of the project period does not contain any information collection requirements.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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Dated: May 29, 2013.

**Michael Yudin,**

*Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013-13070 Filed 6-3-13; 8:45 am]

**BILLING CODE 4000-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2012-0971;FRL-9818-1]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Redesignation of San Diego County to Attainment for the 1997 8-Hour Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving, as a revision of the California state implementation plan, a request from the California Air Resources Board to redesignate the San Diego County ozone nonattainment area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (1997 ozone standard) because the request meets the statutory requirements for redesignation under the Clean Air Act. EPA is also approving the State's plan for maintaining the 1997 ozone standard in San Diego County for ten years beyond redesignation, and the inventories and related motor vehicle emissions budgets within the plan, because they meet the applicable requirements for such plans and budgets.

**DATES:** This final rule is effective on July 5, 2013.

**ADDRESSES:** EPA has established a docket for this action: Docket ID No. EPA-R05-OAR-2012-0791. Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3963, [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

## Table of Contents

- I. Summary of Today's Final Action
- II. Background
- III. What comments did EPA receive on the proposed rule?
- IV. What actions is EPA taking?
- V. Statutory and Executive Order Reviews

### I. Summary of Today's Final Action

EPA is approving several related actions. First, under Clean Air Act (CAA or "Act") section 110(k)(3), EPA is approving a maintenance plan for the 1997 8-hour ozone standard ("San Diego 8-hour maintenance plan") for the San Diego County 1997 ozone nonattainment area ("San Diego 8-hour area") as a revision to the California state implementation plan (SIP).<sup>1</sup> The San Diego 8-hour maintenance plan is included in a document titled *Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County (December 2012)* submitted by the California Air Resources Board (CARB) on December 28, 2012.

In connection with the San Diego 8-hour maintenance plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone national ambient air quality standard (1997 ozone NAAQS or 1997 ozone standard) for at least 10 years beyond redesignation (i.e., through 2025) and the contingency provisions describing the actions that the San Diego County Air Pollution Control District (SDCAPCD) will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also approving the motor vehicle emissions budgets (MVEBs) in the San Diego 8-hour maintenance plan because we find that they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), EPA is approving CARB's request that accompanied the submittal of the San Diego 8-hour maintenance plan, that is, to redesignate the San Diego 8-hour area to attainment for the 1997 ozone standard. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this

<sup>1</sup> On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm (the 2008 8-hour ozone standard), and on May 21, 2012, EPA designated San Diego County as nonattainment for the 2008 8-hour ozone standard (77 FR 30088). This rulemaking relates only to the 1997 8-hour ozone standard and does not relate to the 2008 8-hour ozone standard.

regard is based on our determination that the area has attained the 1997 ozone standard; that relevant portions of the California SIP are fully approved; that the improvement in air quality is due to permanent and enforceable reductions in emissions; that California has met all requirements applicable to the San Diego 8-hour area with respect to section 110 and part D of the CAA; and is based on our approval of the San Diego 8-hour maintenance plan, which is part of this action.

## II. Background

On March 25, 2013 (78 FR 17902), EPA issued a notice of rulemaking proposing to approve California's request to redesignate the San Diego County area to attainment for the 1997 8-hour ozone standard, as well as proposing to approve California's ten-year ozone maintenance plan for the area, and the volatile organic compound (VOC) and oxides of nitrogen (NO<sub>x</sub>) MVEBs, and VOC and NO<sub>x</sub> emission inventories as revisions of the California SIP.<sup>2</sup> The proposed rulemaking set forth the basis for determining that California's redesignation request meets the CAA requirements for redesignation for the 1997 8-hour ozone NAAQS. The proposed rulemaking provided an extensive background on the ozone standards and their relationship to historical air quality in San Diego County. The proposed rulemaking also described the complete, quality-assured air quality monitoring data for San Diego County for 2009–2011 showing that this area attained the 1997 8-hour ozone NAAQS. Preliminary data available to date for 2012 are consistent with continued attainment of the 1997 8-hour ozone NAAQS.

## III. What comments did EPA receive on the proposed rule?

EPA's proposed rule provided a 30-day public comment period. During this period, we received comment letters from the United States Department of the Navy and the Industrial Environmental Association in support of EPA's March 25, 2013, proposed rule. During the public comment period, we did not receive any comments opposing the proposed rule.

## IV. What actions is EPA taking?

Under CAA section 110(k)(3), and for the reasons provided in the proposed

rule and summarized herein, EPA is approving CARB's submittal dated December 28, 2012 of the *Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County* (December 2012) as a revision to the California state implementation plan (SIP). In connection with the San Diego 8-hour maintenance plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone NAAQS for 10 years beyond redesignation (i.e., through 2025) and the contingency provisions describing the actions that SDCAPCD and CARB will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is approving the MVEBs in the San Diego 8-hour maintenance plan (shown in table 7 of this document) because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), we are approving CARB's request, which accompanied the submittal of the maintenance plan, to redesignate the San Diego County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our determination that the area has attained the 1997 ozone NAAQS; that relevant portions of the California SIP are fully approved; that the improvement in air quality is due to permanent and enforceable reductions in emissions; that California has met all requirements applicable to the San Diego 8-hour area with respect to section 110 and part D of the CAA; and is based on our approval of the San Diego 8-hour maintenance plan, which is part of this action.

## V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to

attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely approve a State plan and redesignation request as meeting federal requirements and do not impose additional requirements beyond those by state law. For these reasons, these actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Nonetheless, in accordance with EPA's 2011 Policy on Consultation and Coordination with Tribes, EPA has

<sup>2</sup> Ground-level ozone is generally not emitted directly by sources. Rather, directly-emitted NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone, as a secondary pollutant, along with other secondary compounds. NO<sub>x</sub> and VOC are "ozone precursors." Reduction of peak ground-level ozone concentrations is typically achieved through controlling VOC and NO<sub>x</sub> emissions.

notified Tribes located within the San Diego County 8-hour ozone nonattainment.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 14, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52— APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(425) to read as follows:

§ 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(425) A plan was submitted on December 28, 2012, by the Governor's designee.

(i) [Reserved]

(ii) Additional material

(A) San Diego County Air Pollution Control District (SDAPCD).

(1) Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County, including motor vehicle emissions budgets (MVEBs) and inventories.

(2) SDAPCD Resolution Number 12-175, dated December 5, 2012.

“Resolution Adopting the Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County,” including inventories and motor vehicle emissions budgets for 2020 and 2025.

(B) State of California Air Resources Board (CARB)

(1) CARB Resolution Number 12-36, dated December 6, 2012. “Approval of the San Diego 8-Hour Ozone SIP Redesignation Request and Maintenance Plan,” including inventories and motor vehicle emissions budgets for 2020 and 2025.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

4. Section 81.305 is amended by revising the entry for San Diego County, CA in the table entitled “California—1997 8-Hour Ozone NAAQS (Primary and Secondary)” to read as follows:

§ 81.305 California.

\* \* \* \* \*

CALIFORNIA—1997 8-HOUR OZONE NAAQS (PRIMARY AND SECONDARY)

Table with 5 columns: Designated area, Date 1, Type, Date 1, Type. Rows include San Diego, CA; San Diego County (part); That portion of San Diego County that excludes the areas listed below: La Posta Areas #1 and #2, Cuyapaipe Area, Manzanita Area, Campo Areas #1 and #2; La Posta Areas #1 and #2; Cuyapaipe Area; Manzanita Area; Campo Areas #1 and #2.

a Includes Indian Country located in each county or area, except as otherwise specified.

b The boundaries for these designated areas are based on coordinates of latitude and longitude derived from EPA Region 9's GIS database and are illustrated in a map entitled “Eastern San Diego County Attainment Areas for the 8-Hour Ozone NAAQS,” dated March 9, 2004, including an attached set of coordinates. The map and attached set of coordinates are available at EPA's Region 9 Air Division office. The designated areas roughly approximate the boundaries of the reservations for these tribes, but their inclusion in this table is intended for CAA planning purposes only and is not intended to be a federal determination of the exact boundaries of the reservations. Also, the specific listing of these tribes in this table does not confer, deny, or withdraw Federal recognition of any of the tribes so listed nor any of the tribes not listed.

1 This date is June 15, 2004, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 2013-13064 Filed 6-3-13; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES****45 CFR Parts 155 and 156**

[CMS-9964-F2]

RIN 0938-AR76

**Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Small Business Health Options Program****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule.

**SUMMARY:** This final rule implements provisions of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act) related to the Small Business Health Options Program (SHOP). Specifically, this final rule amends existing regulations regarding triggering events and special enrollment periods for qualified employees and their dependents and implements a transitional policy regarding employees' choice of qualified health plans (QHPs) in the SHOP.

**DATES:** These regulations are effective on July 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Leigha Basini at (301) 492-4307.

**SUPPLEMENTARY INFORMATION:****I. Executive Summary**

Beginning in 2014, individuals and small businesses will be able to purchase private health insurance through competitive marketplaces, called Affordable Insurance Exchanges or "Exchanges" (also called Health Insurance Marketplaces). Section 1311(b)(1)(B) of the Affordable Care Act contemplates that in each State there will be a SHOP that assists qualified employers in providing health insurance options for their employees. The final rule, Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (Exchange Establishment Rule),<sup>1</sup> as modified by the Notice of Benefit and Payment Parameters for 2014,<sup>2</sup> sets forth

<sup>1</sup> Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 FR 18310 (March 27, 2012) (to be codified at 45 CFR parts 155, 156, & 157).

<sup>2</sup> Patient Protection and Affordable Care Act; CMS Notice of Benefit and Payment Parameters for 2014,

standards for the administration of SHOP Exchanges. In this rule, we finalize provisions proposed in the Establishment of Exchanges and Qualified Health Plans; Small Business Health Options Program Notice of Proposed Rule Making,<sup>3</sup> which amends some of the standards established in the Exchange Establishment Rule.

In the Exchange Establishment Rule, we established standards for special enrollment periods for people enrolled through an individual market Exchange, and provided that, in most instances, a special enrollment period is 60 days from the date of the triggering event. See 45 CFR 155.420. We also made these provisions applicable to SHOPS, at § 155.725(a)(3). In the proposed rule we proposed and this final rule amends, the special enrollment period for the SHOP to 30 days for most applicable triggering events, so that it aligns with the special enrollment periods for the group market established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).<sup>4</sup> To further align the SHOP provisions with HIPAA, we also proposed that if an employee or dependent becomes eligible for premium assistance under Medicaid or the Children's Health Insurance Program (CHIP) or loses eligibility for Medicaid or CHIP, this would be a triggering event, and the employee or dependent would have a 60-day special enrollment period to select a QHP. This triggering event had previously been inadvertently omitted from the regulations because it applies only to group health plans and health insurance coverage in the group market. We also proposed to make a conforming change to § 156.285(b)(2), so that this section references the SHOP special enrollment periods in a way that is consistent with our proposed changes to § 155.725.

In the Exchange Establishment Rule, we also set forth the minimum functions of a SHOP, including that the SHOP must allow employers the option to offer employees all QHPs at a level of coverage chosen by the employer, and that the SHOP may allow employers to offer one or more QHPs to qualified employees by other methods. We proposed and are now finalizing the following transitional policy. For plan

78 FR 15410 (March 11, 2013) (to be codified at 45 CFR parts 153, 155, 156, 157, & 158).

<sup>3</sup> Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Small Business Health Options Program, 77 FR 15553 (March 11, 2013) (to be codified at 45 CFR parts 155 & 156).

<sup>4</sup> HIPAA added section 9801(f) to the Internal Revenue Code (the Code), section 701(f) to the Employee Retirement Income Security Act (ERISA), and section 2704(f) to the Public Health Service Act.

years beginning on or after January 1, 2014 and before January 1, 2015, a SHOP will not be required to permit qualified employers to offer their qualified employees a choice of QHPs at a single level of coverage, but will have the option of doing so. Federally-facilitated SHOPS (FF-SHOPS) will not exercise this option, but will instead allow employers to choose a single QHP from the choices available in FF-SHOP to offer their qualified employees. This transitional policy is intended to provide additional time to prepare for an employee choice model and to increase the stability of the small group market while providing small groups with the benefits of SHOP in 2014 (such as a choice among competing QHPs and access for qualifying small employers to the small business health care tax credit). We also proposed changes to the effective date of the SHOP premium aggregation function set forth at § 155.705(b)(4) in the Exchange Establishment Rule consistent with this transitional policy, which we are finalizing in this rule.

**II. Background***A. Legislative Overview*

Section 1311(b) of the Affordable Care Act establishes that there will be a SHOP in each State to assist qualified small employers in providing health insurance options to their employees.

Section 1311(c)(6) of the Affordable Care Act sets forth that the Secretary of Health and Human Services (HHS) shall direct Exchanges to provide for special enrollment periods. Section 155.420 of the Exchange Establishment Rule established special enrollment periods for the individual market, and § 155.725(a)(3) established them for the SHOP.

Section 1312(a)(2) of the Affordable Care Act provides that qualified employers may offer qualified employees a choice among all QHPs at a level of coverage chosen by the employer. Section 1312(f)(2)(A) defines a qualified employer as a small employer that elects to make all full-time employees of such employer eligible for one or more QHPs offered in the small group market through an Exchange that offers QHPs. The Exchange Establishment Rule set forth standards for the SHOP and implemented section 1312 at 45 CFR, part 155, subpart H.

*B. Stakeholder Consultation and Input*

HHS has consulted with a wide range of interested stakeholders on policy matters related to the SHOP, including through regular conversations with the